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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
WISCONSIN

UNITED STATES OF AMERICA )  
AND )  
THE STATE OF WISCONSIN, )  
PLAINTIFFS, )  
v. )  
MARATHON ELECTRIC )  
MANUFACTURING CORPORATION, )  
AND )  
THE CITY OF WAUSAU, )  
DEFENDANTS. )

FILED  
JOSEPH W. ...  
CASE  
NUMBER  
CIVIL ACTION NO. 80C-0655C

CONSENT DECREE

BACKGROUND

The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. Section 9605, placed the Wausau Groundwater Contamination Site (also known as the Wausau Water Supply NPL Site) in Marathon County, Wisconsin (the "Facility" as specifically defined in Paragraph 3.E. of this Consent Decree) on the National Priorities List ("NPL"), which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, (52 Fed. Reg. 21054);

In July of 1987, in response to a release or a substantial threat of a release of a Hazardous Substance, Pollutant or Contaminant into, at or from the Facility, U.S. EPA commenced a phased Remedial Investigation and Feasibility Study ("RIFS") pursuant to 40 C.F.R. 300.68 for the Facility;

The U.S. EPA completed a Phased Technical Memorandum Report on April 25, 1988, and completed a Phased Feasibility Study ("PFS") Report and Proposed Plan for Interim Remedial Action on October 3, 1988;

The Plan for Interim Remedial Action proposed an interim remedial action at the Facility;

On or about October 3, 1988, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. Section 9617, published notice of the completion of the PFS and of the proposed interim remedial action and provided opportunity for public comment to be submitted in writing to U.S. EPA by October 24, 1988, or orally at a public meeting held in the City of Wausau, Wisconsin, on October 17, 1988;

U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. Section 9617, has kept a transcript of the public meeting and has made this transcript available to the public as part of the administrative record located at U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, at the Marathon County Public Library, Wausau, Wisconsin, and at Wausau City Hall, Wausau, Wisconsin.

On October 13, 1988, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. Section 9622, issued special notice to certain parties that the U.S. EPA determined each party to be a potentially responsible party ("PRP") regarding the proposed interim remedial action at the Facility;

In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. Section 9621(f)(1)(F), U.S. EPA officially notified the State of Wisconsin ("State") on October 13, 1988, of negotiations with PRPs regarding the scope of the interim remedial design and interim remedial action for the Facility, and, on or before August 16, 1988, U.S. EPA provided the State with an opportunity to participate in such negotiations and be a party to any settlement;

Certain persons have provided comments on U.S. EPA's proposed interim remedial action, and to such comments U.S. EPA provided a summary of responses, all of which have been included in the administrative record referred to above;

Considering the proposed interim remedial action and the public comments received, U.S. EPA has reached a decision on an interim remedial action, which is embodied in a document called an interim Record of Decision ("ROD"), which was signed by the U.S. EPA, Region V, Regional Administrator on December 23, 1988, to which the State has given its concurrence, and which includes a discussion of U.S. EPA's reasons for the selected interim remedial action. The interim ROD is hereby

incorporated into and made a part of this Consent Decree, and is attached to this Consent Decree as Attachment I;

The defendant signatories to this Consent Decree ("Settling Defendants", as defined in Paragraph 3.J. of this Consent Decree) are in agreement with U.S. EPA's interim ROD and the selected interim remedial action;

U.S. EPA, pursuant to Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b), has provided public notice of adoption of the interim remedial action embodied in the form of the interim ROD, including notice of the interim ROD's availability to the public for review in the same locations as the administrative record referred to above;

Pursuant to Section 117(d) of CERCLA, 42 U.S.C. Section 9617(d), the notice has been published in a major local newspaper of general circulation;

Pursuant to Section 121(d)(1) of CERCLA, 42 U.S.C. Section 9821(d)(1), U.S. EPA, the State, and Settling Defendants ("the Parties") believe that the interim remedial action adopted by U.S. EPA will, in conjunction with or upon completion of the final remedy for the Facility, at a minimum, attain a degree of cleanup of Hazardous Substances, Pollutants or Contaminants released into the environment and of control of further release which, at a minimum, assures protection of human health and the environment at the Facility;

The Parties believe the interim remedial action adopted by U.S. EPA will, in conjunction with or upon completion of the

final remedy for the Facility, provide a level or standard of control for such Hazardous Substances, Pollutants, or Contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under Federal law or facility siting law in accordance with Section 121 of CERCLA, 42 U.S.C. Section 9621(d)(2), and the National Contingency Plan ("NCP"), 40 C.F.R. Section 300, et. seq.;

Settling Defendants agree to implement the interim remedial action adopted by U.S. EPA in the ROD, as set forth in the interim remedial action plan ("RAP"). Upon U.S. EPA approval, the RAP will be incorporated into and become a part of this Consent Decree as Attachment II;

U.S. EPA has determined that the work required under the Consent Decree will be done properly by Settling Defendants, and the Settling Defendants are qualified to implement the interim remedial action selected in the interim ROD and;

The Parties recognize, and intend to further hereby, the public interest in the expeditious cleanup of the Facility, including cleanup of the groundwater in the City of Wausau, and avoiding prolonged and complicated litigation between the Parties;

NOW, THEREFORE, it is hereby Ordered and Decreed:

## I.

JURISDICTION

1. This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto, pursuant to 28 U.S.C. Sections 1331, 1345, 1355, and 1395(a), and Sections 107(a), 113(b), and 122 of CERCLA, 42 U.S.C. Sections 9607(a), 9613(b), and 9622. Settling Defendants shall not challenge this Court's jurisdiction to enter, modify, and enforce this Consent Decree.

## II.

PARTIES BOUND

2. This Consent Decree applies to and is binding upon the undersigned Parties and their officers, directors, agents, successors and assigns. The undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that Party to it. Settling Defendants shall provide a copy of this Consent Decree to the Contractor hired to perform the Work required by this Consent Decree and shall require the Contractor to provide a copy thereof to any subcontractor retained to perform any part of the Work required by this Consent Decree.

## III.

DEFINITIONS

3. For the purposes of this Consent Decree only, and subject to the provisions of Section XXVII, whenever the following terms are used in this Consent Decree and the Attachments hereto, the following definitions specified in this Paragraph shall apply:

A. "Remedial Action Plan" ("RAP") means the plan for implementation of the interim remedial design and interim remedial action, and for operation, maintenance and completion of the interim remedial action at the Facility. The RAP shall be incorporated into and become a part of this Consent Decree upon approval by U.S. EPA as Attachment II to this Consent Decree.

B. "Architect" or "Engineer" means the company or companies retained by the Settling Defendants to prepare the construction plans and specifications necessary to accomplish the interim remedial action described in the interim ROD.

C. "Contractor" means the company or companies retained by or on behalf of Settling Defendants to undertake and complete the work required by this Consent Decree. Each contractor and subcontractor shall be deemed to be related by contract to each Settling Defendant within the meaning of 42 U.S.C. Section 9607(b).

D. "Consent Decree" means this Decree and all Attachments hereto.

E. "Facility" refers to the soil, subsoil, groundwater and the surface water in and around the City of Wausau, Wisconsin, and encompasses the aquifer underlying the City of Wausau, Wisconsin. The Facility is referred to as the Wausau Groundwater Contamination Site (also known as the Wausau Water Supply NPL Site), which Facility is located in Marathon County, Wisconsin, as shown on the map attached as Attachment III.

F. "Future Liability" refers to liability arising after U.S. EPA's Certification of Completion is issued pursuant to Section XXV of this Consent Decree.

G. The term "Hazardous Substance, Pollutant or Contaminant" shall have the meaning provided in Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. Sections 9601(14) and 9601(33).

H. "WDNR" means the Wisconsin Department of Natural Resources.

I. "National Contingency Plan" ("NCP"), 40 C.F.R. Section 300, et. seq., shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. Section 9605.

J. "Settling Defendants" refers to the City of Wausau and Marathon Electric Manufacturing Corporation.

K. "Parties" means the United States of America, the State of Wisconsin and the Settling Defendants.

L. "Plaintiffs" means the United States of America and its agencies and departments, and the State of Wisconsin, and its agencies and departments.



M. "Past Costs" means costs incurred by Plaintiffs pursuant to 42 U.S.C. Section 9601 et. seq., as of the date of entry of this Consent Decree, in connection with the preparation and approval of the PFS, the interim ROD and the interim remedial action.

N. "Oversight Costs" are those costs incurred by Plaintiffs pursuant to 42 U.S.C. Section 9601 et. seq. after the date of entry of this Consent Decree, in connection with the review, approval, implementation, operation, maintenance, oversight and/or completion of the interim remedial action.

O. "Response Costs" are those costs incurred by U.S. EPA or the State, other than the costs defined above at Paragraphs 3.M. and 3.N. These include costs incurred pursuant to 42 U.S.C. 9604 and 9606 and/or pursuant to Paragraphs 12, 19, 25, 66 and 67.

P. "State" means the State of Wisconsin.

Q. "United States" means the United States of America.

R. "U.S. EPA" means the United States Environmental Protection Agency.

S. "U.S. DOJ" means the United States Department of Justice.

T. "Waste Material" means any hazardous substances, as defined 42 U.S.C. Section 9601(14) and any associated contaminated material, pollutant or contaminant as defined by 42 U.S.C. Section 9601(33).

U. "Work" means the design, construction and implementation, in accordance with this Consent Decree, of the tasks described in the interim ROD, this Consent Decree, the Remedial Action Plan to be attached hereto, and in any schedules or plans required to be submitted pursuant to this Consent Decree.

#### IV.

##### GENERAL PROVISIONS

#### 4. Commitment of Plaintiffs and Settling Defendants:

A. Settling Defendants agree jointly and severally to finance and perform the Work as defined in Paragraph 3.U. hereof.

B. The Work, as defined in Paragraph 3.U. hereof, shall be completed in accordance with all requirements of this Consent Decree, the interim ROD and the RAP, including the standards, specifications and the time periods set forth herein or set forth pursuant to this Consent Decree.

#### 5. Permits and Approvals:

A. Except as set forth in Paragraph 5.B., all activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations, requirements and permits. The United States and the State have determined that the obligations and procedures authorized under this Consent Decree are consistent with the authority of the

United States and the State under applicable law to establish appropriate remedial measures for the Facility.

B.i. The United States and the State have determined that no federal, state, or local permits are required for Work conducted entirely on site as described in the approved RAP.

ii. Any potential or actual activity involving use of groundwater extracted or to be extracted by the interim remedial action, including the potential use of treated or non-treated groundwater as non-contact cooling water in the Marathon Electric Manufacturing Corporation's plant, which is not specifically and previously approved by the United States and the State, is not considered "Work" as described in Paragraph 3.U. and as described in the RAP.

iii. Settling Defendants shall obtain all permits or approvals as required and necessary under federal, state or local laws for off-site Work, and shall submit timely applications and requests for any such permits and approvals.

iv. Settling Defendants shall provide prompt prior notice to U.S. EPA and the State of intent to conduct non-approved activities at the Facility which may significantly impact the interim remedial action. For purposes of this Subparagraph, activities which "may significantly impact the interim remedial action" are activities which would cause a substantial alteration in the local hydrologic groundwater conditions, as depicted and assumed by the October 3, 1988, U.S. EPA PFS for the Facility and by the interim ROD attached hereto as

Attachment I. Such activities include: 1) creation of a surface water lagoon or reservoir in or on the facility (due to effect on aquifer recharge rates); or 2) significant alterations in the City of Wausau public water supply well pumping scheme (due to the possibility that significant changes could reverse or substantially alter the hydrological conditions assumed and depicted in the PFS and interim ROD).

v. U.S. EPA, in consultation with the State, retains the right, pursuant to Section 122(e)(6) of CERCLA, 42 U.S.C. Section 9622(e)(6), to direct, approve or disapprove of the length or manner of operation of the interim remedy both prior to and after issuance of the Certification of Completion for this Consent Decree.

C. The standards and provisions of Section XII hereof describing "force majeure" shall govern delays in obtaining permits for the Work and also the denial of any such permits.

D. Settling Defendants shall include in all contracts or subcontracts entered into for Work required under this Consent Decree, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all Work required by such contracts or subcontracts in compliance with all applicable laws and regulations

E. This Consent Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal or state statute or regulations.

V.

PERFORMANCE OF THE WORK BY  
SETTLING DEFENDANTS

6. All interim remedial design Work to be performed by Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional Architect or Engineer. Prior to the initiation of interim remedial design Work for the Facility, the Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of any Engineer or Architect proposed to be used in carrying out the interim remedial design Work to be performed pursuant to this Consent Decree. Selection of any such architect or engineer shall be subject to approval by U.S. EPA and the State. The U.S. EPA and the State hereby acknowledge that Settling Defendants have submitted the name, title and qualifications of and have received the Plaintiff's prior approval for the Engineer selected by Settling Defendants pursuant to this Section.

7. All interim remedial action Work to be performed by the Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional Engineer. Prior to the initiation of interim remedial action Work at the Facility, the Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed Engineer, and the names of principal Contractors and/or Subcontractors proposed to be used in carrying out the interim remedial action Work to

be performed pursuant to this Consent Decree. Selection of any such Engineer or Contractor and/or Subcontractor shall be subject to approval by the U.S. EPA and the State.

8. Attachment II to this Consent Decree will provide a RAP for the implementation, performance and completion of the interim remedial design and interim remedial action at the Facility. The RAP shall be incorporated into and made an enforceable part of this Consent Decree upon approval by U.S. EPA in consultation with the State.

9. The following Work shall be performed:

A. Within thirty (30) days of the certified receipt of the executed Consent Decree by the Settling Defendants, the Settling Defendants shall submit a Draft RAP to the U.S. EPA and the State describing and setting a schedule for the interim remedial design and interim remedial action Work to be conducted to implement, perform and complete the interim remedial action in accordance with the ROD:

i. The RAP shall include a groundwater monitoring plan, and shall include a discussion of the following items:

- a. Preparation of the Remedial Design and Remedial Action Work Plan (RD/RA Work Plan) and of the Plans to be included in the RD/RA Work Plan;
- b. Remedial Design activities;
- c. Remedial Action activities;
- d. Operation and Maintenance of the interim remedial action;
- e. Reports and Documents to be prepared and submitted;

f. Project Organization;

g. Schedule for initiation and completion of activities and Work, and for submission of reports and documents;

ii. The RAP shall describe in detail and provide a schedule for activities determined to be necessary by U.S. EPA, after consultation with the State, to implement, perform and complete the interim remedial action selected in the interim ROD.

iii. The Settling Defendants shall revise the Draft RAP and shall submit a Revised RAP to U.S. EPA and the State within thirty (30) days of receipt of U.S. EPAs approval, disapproval or conditional approval of the Draft RAP. The Revised RAP will be incorporated into and attached to this Consent Decree as Attachment II, upon approval by U.S. EPA after consultation with the State.

B. Within sixty (60) calendar days of the approval of the Revised RAP (or of approval of the Draft RAP, if no revisions are necessary), by U.S. EPA in consultation with the State, the Settling Defendants shall submit to the State and to U.S. EPA a Remedial Design and Remedial Action Work Plan ("RD/RA Work Plan") for Work to be conducted at the Facility. The RD/RA Work Plan shall be developed in conformance with the interim ROD, the RAP, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents and guidance provided by U.S. EPA.

C. The RD/RA Work Plan submittal shall include, but not be limited to, the following project plans, including a schedule for submittal of the following project plans:

- (1) a sampling and analysis plan;
- (2) a health and safety/contingency plan;
- (3) a plan for satisfaction of permitting requirements (if any);
- (4) a quality assurance project plan ("QAPP");
- (5) a groundwater monitoring plan; and
- (6) an operations and maintenance plan.

The RD/RA Work Plan shall also include a schedule for implementation of the RD/RA tasks and submittal of RD/RA reports.

D. The RD/RA Work Plan and other required documents and reports (hereinafter referred to as "documents") shall be subject to review, modification and approval by U.S. EPA, in consultation with the State.

E. Within forty-five (45) calendar days of receipt of any document, the U.S. EPA Remedial Project Manager will attempt to notify Settling Defendants, in writing, of approval or disapproval of the document, or any part thereof. In the event that a longer review period is required, the U.S. EPA Remedial Project Manager shall notify Settling Defendants of that fact within thirty (30) calendar days of receipt of document. In the event of any disapproval, U.S. EPA, after consultation with the State, shall, to the extent practicable, specify, in writing, any deficiencies and the reasons for the determination of any deficiency and required modifications and the reason for such modifications to the document. In the event of any



disapproval, U.S. EPA's right to approve or disapprove a submittal by Settling Defendants shall not be negated should the time stated in this Paragraph be exceeded by U.S. EPA.

F. Within thirty (30) calendar days of receipt of any disapproval of a document by U.S. EPA, the Settling Defendants shall submit a revised document to U.S. EPA and the State which incorporates the U.S. EPA modifications, or shall provide a notice of dispute pursuant to Section XIII below.

G. Settling Defendants shall proceed to implement the Work detailed in the RD/RA Work Plan if and when the RD/RA Work Plan is fully approved by U.S. EPA in consultation with the State, unless otherwise directed to proceed, in writing, by U.S. EPA. The Settling Defendants shall not commence field activities until receipt of full approval by U.S. EPA of the RD/RA Work Plan, unless otherwise directed in writing by U.S. EPA.

H. The fully approved RD/RA Work Plan shall be deemed incorporated into and made an enforceable part of this Consent Decree once approved by U.S. EPA, in consultation with the State. However, portions of the RD/RA Work Plan, including those items required in Paragraph 9.C. above, may be incorporated into this Consent Decree, upon written approval by U.S. EPA, after consultation with the State. The approved portion of the RD/RA Work Plan shall be incorporated herein and implemented at the written direction of U.S. EPA in consultation with the State.

I. All RD/RA Work shall be conducted in accordance with the National Contingency Plan, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the requirements of this Consent Decree, including the standards, specifications and schedule contained in the RAP and RD/RA Work Plan.

10. The Parties acknowledge and agree that neither the RAP nor the RD/RA Work Plan constitutes a warranty or representation of any kind by Plaintiffs that the RAP or RD/RA Work Plan will achieve the Performance Goals and Clean Up Standards set forth in the ROD and in Paragraph 11 below and shall not foreclose Plaintiffs from seeking performance of all terms and conditions of this Consent Decree, including the applicable Performance Goals and Clean Up Standards.

11. In order to assure that Settling Defendants meet the requirement that operation of the interim remedial action extraction well system achieves the requirements and objectives of the interim ROD, including meeting all Applicable or Relevant and Appropriate Requirements (ARARs), Settling Defendants shall meet the Performance Goals and Clean-up Standards as set forth in 11.A. through 11.C. below, and as set forth in the RAP (to be incorporated herein as Attachment II) and RD/RA Work Plan. These Performance Goals and Clean-up Standards are based upon the interim RODs response objectives and ARARs, upon performance criteria listed in Subparagraph A below, upon the Wisconsin Administrative Code Chapter NR 140 (WAC NR 140) Groundwater Quality Standards, upon the applicable

Safe Drinking Water Act Maximum Concentration Levels (MCLs), upon the applicable Clean Water Act Water Quality Criteria and related discharge limits (WQCs), and upon health based levels, as applicable.

A. PERFORMANCE GOALS: The Performance Goals for the interim remedial action are intended to ensure that operation of the extraction well system will achieve the response objectives as stated in the interim ROD.

The interim RODs selected remedy includes a provision, as described in the interim ROD as Alternative 3, for implementation of an additional extraction well, if necessary, to achieve the response objectives, Performance Goals and Clean-up Standards stated in the PFS, in the interim ROD, and in this Consent Decree. Settling Defendants shall implement the additional extraction well if determined necessary and as directed by the U.S. EPA in consultation with the State.

The determination of whether the initial extraction well meets the response objectives (as listed in the interim ROD) for this interim remedial action will be based on an evaluation of the extraction well system based on the following criteria:

- i. The areal extent of the cone of influence created by pumping the extraction well;
- ii. The ability of the extraction well to capture the plume (such plume being described in Section IV of the attached interim ROD);
- iii. The amount of VOC being removed by the system over time;
- iv. The ability of the system to protect CW7 and CW9 (see

Attachment III for locations) from Hazardous Substances, Pollutants or Contaminants.

The evaluation of the system, for purposes of determining whether the single extraction well is achieving the Performance Goals, will utilize data collected from a predetermined set of existing monitoring and production wells, during start up and after the system achieves stabilized conditions in the aquifer, as determined by U.S. EPA in consultation with the State. Specific well locations, sample frequencies and parameters to be measured will be described in the groundwater monitoring plan which is to be included in the approved RAP. Settling Defendants shall periodically submit performance reports on the system as required and specified in the approved RAP and/or RD/RA Work Plan. In addition, Settling Defendants shall assure that the extraction system performs in a manner which complies with all applicable WQS throughout the duration of operation of the system.

B. CLEAN-UP STANDARDS: Clean-up Standards for this interim remedial action are based on WAC NR 140 Groundwater Quality Standards, Safe Drinking Water Act MCLs, Clean Water Act WQCs, and health based levels, as appropriate.

For purposes of this Consent Decree, the primary contaminant of concern is trichloroethylene (TCE). In addition to TCE, additional contaminants of concern are any contaminants specified in WAC NR 140 or in the Hazardous Substance List (HSL), which are detected during the monitoring program, as

determined by U.S. EPA in consultation with the State, and those contaminants specified in the approved RAP and/or in the RD/RA Work Plan.

C. WORK REQUIRED TO MEET CLEAN-UP STANDARDS. In order to meet the Clean-up Standards, Settling Defendants shall, at the direction of U.S. EPA in consultation with the State, operate the extraction well system called for in the interim ROD (including an additional extraction well if required by U.S. EPA in consultation with the State), until:

- i. the concentration of TCE is reduced to 1.8 ppb within a specified zone of compliance; and
- ii. the concentrations of additional contaminants of concern (as listed in WAC NR 140, in the HSL, in the RAP or in the RD/RA Work Plan) are reduced to the following levels, whichever is more stringent:
  - a. For additional contaminants which are specified by WAC NR 140, the levels specified for those additional contaminants by WAC NR 140; or
  - b. For additional contaminants not specified by WAC NR 140, the levels required by the Safe Drinking Water Act MCLs; or
  - c. For additional contaminants not specified by WAC NR 140 and not having a specified MCL, the levels required by the applicable Clean Water Act WQC; or
  - d. For additional contaminants not specified by WAC NR 140 and not having a specified MCL, and not having an applicable WQC level, the health based levels set by U.S. EPA in consultation with the State; and
- iii. a demonstration is made that the Water Quality Criteria (water discharge limits) have been complied with (for any discharge to the Wisconsin River); or until
- iv. the final remedy for the Facility directs otherwise.

In order to provide U.S. EPA and the State with the data necessary to determine whether the interim remedial action is meeting the Clean-up Standards, the Settling Defendants shall perform periodic monitoring, within the specified zone of compliance, as specified in the approved RAP and RD/RA Work Plan. The zone of compliance will consist of an area inclusive of predetermined monitoring and production wells, and will be specified in the approved RAP and RD/RA Work Plan.

The groundwater monitoring plan shall include a detailed discussion of the monitoring program to be implemented to test for compliance with the Performance Goals and Clean-up Standards specified herein.

#### VI.

##### U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

12. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and any applicable regulations, and to the extent that the final remedy for the Facility requires, U.S. EPA shall review the interim remedial action at the Facility at least every five (5) years after the entry of the Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. Subject to Section XXVI and Paragraphs 14 and 66 of this Consent Decree, if upon such review, U.S. EPA determines that further response action in accordance with Sections 104 or 106 is appropriate at the Facility, consistent with Section XVII of

this Consent Decree, the U.S. EPA may take or require such action.

13. Settling Defendants shall be provided with an opportunity to confer with U.S. EPA and the State on any response action proposed as a result of U.S. EPAs 5-year review and to submit written comments for the record. After the period for submission of written comments is closed, the Regional Administrator of U.S. EPA, Region V, shall in writing either affirm, modify or rescind the order for further response action. The final decision of U.S. EPA shall be subject to judicial review pursuant to the dispute resolution provisions in Section XIV to the extent permitted by Section 113 of CERCLA, 42, U.S.C. Section 9613.

14. Since the length and manner of operation of the interim remedial action agreed to in this Consent Decree is to be addressed by the final remedy for this Facility, it is anticipated by the Parties that the requirements of this Section will be addressed by the final remedy for the Facility. The final remedy for the Facility will set forth the provisions by which U.S. EPA will meet the requirements of section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and any applicable regulations with regard to the final remedy. Should for some reason this Consent Decree still be in effect five (5) years from the date of entry of this Consent Decree, the requirements of this Section will apply.

## VII.

ADDITIONAL WORK

15. In the event that U.S. EPA, in consultation with the State, or the Settling Defendants determine that additional Work, including additional interim remedial design Work or interim remedial action Work, is necessary to meet the Performance Goals or Clean-up Standards described in Paragraph 11, above, written notification of the need for such additional Work will be provided to the other Project Coordinators. This notification, to the extent practicable, shall specify the reasons such additional Work is necessary. Any additional Work ordered by U.S. EPA after consultation with the State shall be performed by Settling Defendants in a manner consistent with the NCP.

16. Any additional Work determined to be necessary by Settling Defendants is subject to prior written approval by U.S. EPA after U.S. EPA consultation with the State.

17. Any additional Work determined to be necessary by Settling Defendants and approved by U.S. EPA after U.S. EPA consultation with the State, or determined to be necessary by U.S. EPA, after U.S. EPA consultation with the State, in order to meet the Performance Goals or Clean-Up Standards described in Paragraph 11 above, shall be completed by Settling Defendants in accordance with the standards, specifications, and schedules approved by U.S. EPA after U.S. EPA consultation with the State.



## VIII.

QUALITY ASSURANCE

18. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and subsequent amendments to such guidelines upon notification to Settling Defendants of such amendments by U.S. EPA. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit a Quality Assurance Project Plan ("QAPP"), to U.S. EPA and the State for approval, that is consistent with the RAP and applicable guidelines. U.S. EPA, after review of Settling Defendants' QAPP(s) and the State's comments thereon, will notify Settling Defendants of any required modifications, conditional approval, disapproval, or approval of the QAPP(s). Upon notification of disapproval or any need for modifications, Settling Defendants shall make all required modifications in the QAPP subject to the dispute resolution provisions of Section XIII. Sampling data generated consistent with the QAPP shall be admissible as evidence, without objection, in any proceeding under Section XIII of this Consent Decree. Settling Defendants shall assure that U.S. EPA personnel or authorized representatives are allowed access during normal business hours to any laboratory utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall have the laboratory

utilized analyze samples submitted by U.S. EPA for quality assurance monitoring.

IX.

FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

19. To the extent that areas where Work described in the RAP is to be performed, or areas where additional Work required or pursuant to Section VII is to be performed, are owned by persons other than the Parties bound by this Consent Decree, Settling Defendants shall obtain access agreements from the owner(s): A) within thirty (30) calendar days of U.S. EPA approval of the RAP, for purposes of Work described in the RAP; or B) within thirty (30) calendar days of a U.S. EPA determination that additional Work will be performed pursuant to Section VII. Any such agreement(s) shall provide access for U.S. EPA, the State and authorized representatives of U.S. EPA and the State. If such access agreements are not obtained within the time specified herein, Settling Defendants shall so notify U.S. EPA and the State, and Settling Defendants, subject to Section XII hereof, shall use their best efforts, including the seeking of judicial assistance, if necessary, to otherwise secure access to the necessary area. To the extent it is necessary to seek judicial assistance in obtaining access, U.S. EPA and the State may cooperate and assist the Settling Defendants in any such proceedings.

20. Settling Defendants shall make available to U.S. EPA and the State the results of all sampling and/or tests or other

data generated by Settling Defendants with respect to the implementation of this Consent Decree, and shall submit these results in monthly progress reports as described in Section X of this Consent Decree. U.S. EPA and the State, upon written request, shall make available to Settling Defendants the results of all finalized QA/QC sampling and/or finalized QA/QC test or other finalized QA/QC data similarly generated by U.S. EPA with respect to this Consent Decree, to the extent authorized by law.

21. At the request of U.S. EPA or the State, Settling Defendants shall allow split or duplicate samples to be taken by U.S. EPA, the State and/or their authorized representatives, of any samples collected by Settling Defendants with respect to implementation of this Consent Decree. Settling Defendants shall notify U.S. EPA and the State, in writing, not less than fourteen (14) days in advance of any such sample collection activity, unless otherwise agreed by the parties. In addition, U.S. EPA and the State shall have the right to take any additional samples that U.S. EPA or the State deem necessary. In the event of sampling by U.S. EPA, U.S. EPA shall, to the extent practicable under the circumstances, notify Settling Defendants not less than fourteen (14) days in advance of any sample collection activity pursuant to the implementation of this Consent Decree. To the extent not covered in the QAPP, U.S. EPA shall, to the extent practicable under the circumstances, advise Settling Defendants of the parameters to

be analyzed in such sampling. At the request of the Settling Defendants, U.S. EPA shall, to the extent practicable under the circumstances, allow split or duplicate samples to be taken by Settling Defendants and/or their authorized representative of any samples collected by U.S. EPA pursuant to the implementation of this Consent Decree.

X.

REPORTING REQUIREMENTS

22. Settling Defendants shall require the contractor to prepare and provide to U.S. EPA and the State written monthly progress reports which: (A) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (B) include all results of sampling and tests and all other data received by Settling Defendants during the course of the Work; (C) include all plans and procedures completed under the RD/RA Work Plan during the previous month; (D) describe all actions, data and plans which are scheduled for the next month and provide other information relating to the progress of construction as is customary in the industry; (E) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the RAP and/or the RD/RA Work Plan, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be received by U.S. EPA and the State by the

twelfth (12th) day of every month following the effective date of this Consent Decree.

23. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

24. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Settling Defendants shall promptly orally notify the U.S. EPA Remedial Project Manager or, in the event of the unavailability of the U.S. EPA Remedial Project Manager, immediately notify the Emergency Response Section, Region V, United States Environmental Protection Agency, (312-353-2318), in addition to the reporting required by Section 103 of CERCLA. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of the immediate response to such an event, Settling Defendants shall submit a report setting forth all actions taken to respond thereto.

## XI.

REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

25. U.S. EPA shall designate a Remedial Project Manager and the State may designate a Project Coordinator for the Facility, and the Plaintiffs may designate other representatives, including U.S. EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The Remedial Project Manager shall have the authority lawfully vested in a Remedial Project Manager by the National Contingency Plan, 40 C.F.R. Part 300. In addition, the Remedial Project Manager shall have authority to halt, conduct, or direct any Work required by this Consent Decree and to take any necessary response action when conditions at the facility may present an imminent and substantial endangerment to public health or welfare or the environment. Settling Defendants shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work at the Facility.

26. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between Settling Defendants, the State and U.S. EPA concerning the terms and conditions of this Consent Decree shall be made between the Project Coordinators and the Remedial Project Manager.

27. Within twenty (20) calendar days of the effective date of this Consent Decree, Settling Defendants, the State and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator and the Remedial Project Manager and Alternate Remedial Project Manager.

## XII.

### FORCE MAJEURE

28. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes entirely beyond the control of Settling Defendants which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" shall not include increased costs or expenses or non-attainment of the Performance Goals or Clean-up Standards set forth in Paragraph 11 hereof, the ROD and the RAP.

29. When circumstances occur which may delay the completion of any phase of the Work or delay access to the Facility or to any property on which any part of the Work is to be performed, whether or not caused by a "force majeure" event, Settling Defendants shall promptly notify the Remedial Project Manager and the State Project Coordinator by telephone or in the event of their unavailability, the Director of the Waste Management Division of U.S. EPA. Within five (5) days of the event which Settling Defendants contend is responsible for the

delay, Settling Defendants shall supply to Plaintiffs in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendants to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give oral notice to the Remedial Project Manager and State Project Coordinator and to give written explanation to Plaintiffs in a timely manner shall constitute a waiver of any claim of "force majeure".

30. If U.S. EPA agrees, after consultation with the state, that a delay is or was attributable to a "force majeure" event, the Parties shall modify the RD/RA Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay.

31. If U.S. EPA, after consultation with the State, and Settling Defendants cannot agree whether the reason for the delay was a "force majeure" event, or whether the duration of the delay is or was warranted under the circumstances, the parties shall resolve the dispute according to Section XIII hereof. Settling Defendants have the burden of proving "force majeure" as a defense to compliance with this Consent Decree.



## XIII.

DISPUTE RESOLUTION

32. As required by Section 121(e)(2) of CERCLA, the Parties to this Consent Decree shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Decree or any Work required hereunder.

33. In the event that any dispute arising under this Consent Decree is not resolved expeditiously through informal means, any Party desiring dispute resolution under this Section shall give prompt written notice of dispute to the other Parties to the Decree.

34. Within ten (10) days of the service of notice of dispute pursuant to Paragraph 33, the Party who gave the notice shall serve on the other Parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such Party relies (hereinafter the "Statement of Position"). Opposing Parties shall serve their Statements of Position, including supporting documentation, no later than ten (10) days after receipt of the complaining Party's Statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the Work, they shall be shortened upon and in accordance with notice by U.S. EPA.

35. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, the Statements of Position and supporting documentation served pursuant to the preceding Paragraphs, and any other relevant non-privileged information submitted with the Statements of Position. The record shall be available for review and copying by all Parties.

36. Upon review of the administrative record and after consultation with the State, the Director of the Waste Management Division, U.S. EPA, Region V, shall issue a final decision and order resolving the dispute. This order shall be enforceable administratively pursuant to Section 121(e)(2) of CERCLA, subject to the rights of judicial review set forth in Paragraph 37.

37. Any decision and order of U.S. EPA pursuant to Paragraph 36 shall be reviewable by this Court, provided that a motion to review the dispute is filed with the Clerk's office within ten (10) days of receipt of U.S. EPA's decision and order, until the date of termination of this Consent Decree specified pursuant to Section XXV hereof. In any event, judicial review will be conducted on the administrative record, using an arbitrary and capricious standard. Except as set forth in this Paragraph or otherwise in the Consent Decree, this Consent Decree does not establish burdens of proof or

standards of any kind for judicial review of dispute between the parties.

38. The invocation of the procedures stated in this Section shall not extend or postpone Settling Defendants' obligations under this Consent Decree with respect to the disputed issue unless such delay is agreed by U.S. EPA to be attributable to a "force majeure" event or until U.S. EPA finds, or the Court orders, otherwise.

#### XIV.

##### RETENTION AND AVAILABILITY OF INFORMATION

39. Settling Defendants shall make available to U.S. EPA and the State, and shall retain, during the pendency of this Consent Decree and for a period of six (6) years after termination of the final remedy for the Facility, all records and documents in their possession, custody, or control which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by any of them, or on their behalf, with respect to: A) the Work conducted pursuant to this Consent Decree; B) the Facility, and all documents pertaining to their own or any other persons's liability under CERCLA; and C) the location or source, if any, of Hazardous Substances, Pollutants or Contaminants at, in or on the Facility. After the six (6) year period of document retention, Settling Defendants shall notify U.S. EPA, the U.S. DOJ, and the State at least ninety (90) days

prior to the destruction of any such documents, and upon request of U.S. EPA, the U.S. DOJ or the State, the Settling Defendants shall relinquish custody of non-privileged documents to U.S. EPA, U.S. DOJ or the State.

40. Settling Defendants may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7), and pursuant to 40 C.F.R. Part 2, and applicable State law.

41. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by the State, afforded protection under State law by the State. If no such claim accompanies the information when it is submitted to the U.S. EPA and the State, the public may be given access to such information without further notice to Settling Defendants.

42. Information acquired or generated by Settling Defendants in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. Section 9604(e)(7)(F), shall not be claimed as confidential by Settling Defendants.

43. By entering into this Consent Decree, the Settling Defendants do not waive any attorney client, work product or other privilege that may apply to any information not required to be provided to Plaintiffs under this Consent Decree.

## XV.

PAYMENT

44. Settling Defendants shall pay, within forty-five (45) days of the entry of this Consent Decree, FIFTY-THOUSAND DOLLARS (\$50,000.00), which represents a portion of the United States' Past Costs. Payment shall be delivered to:

U.S EPA - Region V  
Attn : Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

in the form of a certified or cashier's check payable to "U.S. EPA Hazardous Substances Superfund" and one copy of such check shall be sent to the Director, Waste Management Division, U.S. EPA, Region V, and to the U.S. DOJ.

45. In consideration of the monies received under Paragraph 44, the United States covenants not to sue Settling Defendants for the monies received pursuant to Paragraph 44.

46. Settling Defendants shall pay all future Oversight Costs, of the United States and the State, incurred, as of and after the date of entry of this Consent Decree, in overseeing implementation of this Consent Decree and the interim remedial action. Except as provided in Paragraph 49 below regarding advance payment of State Oversight Costs, payments shall be made on an annual basis and within thirty (30) days of the submission of itemized Oversight Cost statements and supporting documentation by the United States and the State. The United States and the State shall submit their unpaid Oversight Cost

claims as soon as practicable after each anniversary date of this Consent Decree. Payment shall be made as specified in Paragraphs 44 above and 49 below. In consideration of and upon payment of all Oversight Costs as required by Paragraphs 46, 47, 49 and 50, the United States and the State covenant not to sue for those Oversight Costs incurred by the United States and the State in overseeing the RD/RA Work which are paid by Settling Defendants.

47. If Oversight Costs related to this Consent Decree are outstanding at the time the United States and the State plan to terminate this Consent Decree, Settling Defendants shall, within thirty (30) days of the submission of an itemized Oversight Cost statement and supporting documentation by the United States and the State, and before termination of this Consent Decree, pay such outstanding Oversight Costs.

48. The Past and Oversight Costs paid by Settling Defendants as set forth in this Section of the Consent Decree are not inconsistent with the National Contingency Plan.

49. In the event that the State, through an arrangement with the U.S. EPA, which defines the roles and responsibilities of the Agencies and provides no funding, performs the Oversight for this interim remedial action, the Settling Defendants shall advance the sum of THIRTY-THOUSAND DOLLARS (\$30,000.00) to the State for anticipated State Oversight Costs, within thirty (30) days of notification in writing from the State that such arrangement has been entered. The State shall provide itemized

Oversight Cost statements for all State Oversight Costs. All State Oversight Costs in excess of the advance (\$30,000.00) made pursuant to this paragraph shall be paid by Settling Defendants pursuant to Paragraphs 46 and 51.

50. The Settling Defendants shall pay, within forty-five (45) days of the entry of this Consent Decree, past attorney costs of the State in the amount of FOUR THOUSAND FIVE HUNDRED SIXTY SEVEN DOLLARS AND FOURTEEN CENTS (\$4,567.14) to the State for past attorney costs incurred by the State in relation to the preparation of this Consent Decree. Settling Defendants shall pay ONE THOUSAND NINE HUNDRED SEVENTEEN DOLLARS AND FOURTEEN CENTS (\$1,917.14) of the above stated amount to the "WDNR Environmental Repair Program", as provided in Paragraph 51, below. The balance of TWO THOUSAND SIX HUNDRED FIFTY DOLLARS (\$2,650.00) shall be paid by certified or cashier's check payable to "Wisconsin Department of Justice" which shall be mailed or delivered to Robert A. Selk, Assistant Attorney General, Department of Justice, 123 W. Washington Avenue, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

51. Settling Defendants shall pay State Oversight Costs, pursuant to Paragraphs 46 and 47 above, in the form of a certified or cashier's check payable to "WDNR Environmental Repair Program", which shall be mailed or delivered to Mark Geisfeldt, Chief, WDNR Environmental Response and Repair Section, P.O. Box 7921, Madison, WI 53707

## XVI.

STIPULATED PENALTIES

52. Settling Defendants shall pay stipulated penalties in the amounts set forth in Paragraph 59 below to the United States for each violation of the requirements of Section V hereof or of the RD/RA Work Plan approved pursuant to this Consent Decree, unless U.S. EPA determines that such failure is excused under Section XII ("Force Majeure"). Violation by Settling Defendants shall include any failure to complete any activity required under this Consent Decree, failure to submit a plan required under this Consent Decree, or failure to complete any other matter required under this Consent Decree, in an acceptable manner and within the specified time schedules in any approved plan under this Consent Decree. Any modifications of the time for performance shall be in writing and approved by U.S. EPA.

53. All penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

54. Following U.S. EPA's determination that Settling Defendants have failed to comply with the requirements of this Consent Decree, U.S. EPA shall give Settling Defendants written



notification of the same and describe the non-compliance. This notice shall also indicate the amount of penalties due.

55. All penalties owed to the United States under this Section shall be payable within thirty (30) days of receipt of the notification of non-compliance, unless Settling Defendants invoke the dispute resolution procedures under Section XIII. Penalties shall accrue from the date of violation regardless of whether U.S. EPA has notified Settling Defendants of a violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period pursuant to Paragraph 62 of this Section. Such penalties shall be paid by certified check to the "U.S. EPA Hazardous Substances Superfund" and shall contain Settling Defendants' complete and correct address, the site name, and the civil action number. All checks shall be mailed to U.S. EPA, at the address listed in Paragraph 44 above, with a copy to the U.S. DOJ.

56. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Settling Defendants' obligation to complete the performance required hereunder.

57. Settling Defendants may dispute the United States' right to the stated amount of penalties by invoking the dispute resolution procedures under Section XIII. Penalties shall accrue but need not be paid during the dispute resolution period. If the District Court becomes involved in the resolution of the dispute, the period of dispute shall end upon

the rendering of a decision by the District Court regardless of whether any Party appeals such decision. If Settling Defendants do not prevail upon resolution by the District Court, Settling Defendants shall pay all penalties which accrue prior to and during the period of dispute. In the event of an appeal of the District Court decision, such penalties shall continue to accrue and shall be placed into an interest bearing escrow account until a decision has been rendered by the final court of appeal, or until no further appeal is timely taken. If Settling Defendants prevail upon resolution of the appeal, no penalties shall be payable. Nothing herein shall constitute a waiver of Settling Defendants' right to appeal the decision of the District Court. However, if the United States prevails on appeal, Settling Defendants shall immediately pay all penalties owing.

58. No penalties shall accrue for violations of this Consent Decree caused by events determined by U.S. EPA to be entirely beyond the control of Settling Defendants as identified in Section XII ("Force Majeure"). Settling Defendants have the burden of proving force majeure or compliance with this Consent Decree.

59. The following stipulated penalties shall be payable per violation per day to the United States for any non-compliance identified in Paragraph 52 above.

Amount/Day

\$500

Period of Noncompliance

1st through 10th day

\$1,000	11th through 20th day
\$2,000	21st day and beyond

60. No payments made under this Section shall be tax deductible.

61. This Section shall remain in full force and effect for the term of this Consent Decree, and as provided by Section XXVI herein.

62. Pursuant to 31 U.S.C. Section 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury of any period after the date of billing. A handling charge will be assessed at the end of each thirty (30) day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within ninety (90) days of the due date.

63. If Settling Defendants fail to pay stipulated penalties, the United States may institute proceedings to collect the penalties. Notwithstanding the stipulated penalties provisions of this Paragraph, the United States may elect to assess civil penalties and/or to bring an action in the United States District Court pursuant to Section 109 of CERCLA, 42 U.S.C. Section 9609, to enforce the provisions of this Consent Decree, provided that Settling Defendants' total penalty exposure for violations shall be limited as provided by Section 109 of CERCLA. Payment of stipulated penalties shall not preclude U.S. EPA from electing to pursue any other remedy

or sanction to enforce this Consent Decree, and nothing shall preclude U.S. EPA or the State from seeking statutory penalties against Settling Defendants for violations of statutory or regulatory requirements.

XVII.

COVENANT NOT TO SUE

64. In consideration of actions which will be performed and payments which will be made by the Settling Defendants under the terms of the Consent Decree, and except as otherwise specifically provided in this Consent Decree, the United States and the State covenant not to sue Settling Defendants or their officers, directors, employees, or agents for monies paid to the United States and the State pursuant to this Consent Decree and for monies expended by the Settling Defendants for the Work satisfactorily performed, as determined pursuant to Section XXV (Certification of Termination) of this Consent Decree. This covenant not to sue shall take effect upon certification by U.S. EPA of the completion of the interim remedial action concerning the Facility.

65. This covenant not to sue does not include:

- A. Liability arising from Hazardous Substances removed from the Facility, including from groundwater in the City of Wausau;
- B. Natural Resources damages;
- C. Criminal liability;
- D. Claims based on a failure by the Settling Defendants to meet the requirements of this Consent Decree;

E. Any matters for which the United States is owed indemnification under Section XVIII hereof;

F. Liability for violations of Federal or State law which occur during implementation of the interim remedial action;

G. Liability for unpaid United States and State expenditures related to the Facility;

H. Liability for costs other than those Costs paid by Settling Defendants pursuant to this Consent Decree, or other than costs incurred by Settling Defendants for Work satisfactorily performed pursuant to this Consent Decree;

I. Liability for costs incurred by the United States and State unrelated to this Consent Decree;

66. Notwithstanding any other provision in this Consent Decree: A) the United States and the State reserve the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel the Settling Defendants to perform any additional response work at the Facility and; B) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking payment to the United States for its Response Costs and to the State for its matching share of any Response Costs incurred by the State due to action undertaken by U.S. EPA under CERCLA, relating to the Facility, if:

i. for proceedings prior to U.S. EPA Certification of Completion of the interim remedial action concerning the Facility,

a. conditions at the Facility, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

b. information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information indicates that the interim remedial action is not protective of human health and the environment; or

ii. for proceedings subsequent to U.S. EPA Certification of Completion of the interim remedial action concerning the Facility,

a. conditions at the Facility, previously unknown to the United States, are discovered after the Certification of Completion by U.S. EPA, or

b. information is received, in whole or in part, after the Certification of Completion by U.S. EPA,

and these previously unknown conditions or this information indicates that the interim remedial action is not protective of human health and the environment.

67. Notwithstanding any other provision of this Consent Decree, the covenant not to sue in this Section shall not relieve the Settling Defendants of their obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD, the RAP, the RD/RA Work Plan and any other conditions which are set forth herein. The United States and the State reserve the rights to: A) take response actions at the Facility in the event of a breach of the terms of this Consent Decree; B) seek recovery of Response Costs incurred after entry of this Consent Decree i) resulting from such a breach, ii) relating to any portion of the Work funded or performed by the United States or State, iii) by the United States or State as a result of having

to seek judicial assistance to compel compliance with the Consent Decree; and C) to take any other action needed to respond to conditions at or adjacent to the Facility.

68. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Facility. Plaintiffs and Settling Defendants expressly reserve the right to continue to sue and/or initiate suit against any person not a signatory to this Consent Decree.

#### XVIII.

##### INDEMNIFICATION; OTHER CLAIMS

69. Settling Defendants agree to indemnify, save and hold harmless U.S. EPA, the State and/or their representatives from any and all claims or causes of action arising from acts or omissions of Settling Defendants and/or their representatives in carrying out the activities pursuant to this Consent Decree. U.S. EPA and the State shall notify Settling Defendants of any such claim or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed.

70. The U.S. EPA and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by Settling Defendants in carrying out the activities pursuant to this Consent Decree. The proper

completion of the Work under this Consent Decree is solely the responsibility of Settling Defendants.

71. Settling Defendants waive their rights to assert any claims against the Hazardous Substances SuperFund under CERCLA that are related to any costs incurred by Settling Defendants in performing the Work required pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Hazardous Substance SuperFund.

#### XIX.

##### INSURANCE /FINANCIAL RESPONSIBILITY

72. Prior to commencement of RD/RA Work, Settling Defendants shall submit for approval to U.S. EPA copies of a certificate of insurance and copies of its insurance policies which provide the coverage required in Paragraph 73, below, for liability arising out of Settling Defendants' and their Contractors' or other agents' acts or omissions in performance of the Work.

73. Settling Defendants shall maintain in force the insurance policies required by Paragraph 72 above, such that, in the aggregate, such policies provide the following amounts of coverage:

- A. Comprehensive General Liability Insurance \$5,000,000.00
- B. Automobile Liability Insurance \$1,000,000.00
- C. Worker's Compensation Insurance STATUTORY



which shall protect the United States and the public against any and all liability arising out of Settling Defendants' and their Contractor and other agents' acts or omissions in performance of the Work at the Facility. U.S. EPA reserves the right to require Settling Defendants to obtain additional coverage if determined necessary.

74. One or both of the Settling Defendants shall provide financial security, in the form of a Corporate Guarantee, in the aggregate amount of SIX-HUNDRED THOUSAND DOLLARS (\$600,000.00) to ensure one year of implementation and operation of the Work at the Facility, as provided in Paragraph 75, below.

75. The Corporate Guarantee required by Paragraph 74, above, shall be prepared in accordance with and take the form prescribed by the requirements of 40 C.F.R. Section 264.145(f), and shall be submitted to U.S. EPA for approval within thirty (30) days of the entry of this Consent Decree. All submissions of confidential business information pursuant to this Section shall be treated as such by the U.S. EPA.

#### XX.

#### NOTICES

76. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one Party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XIII hereof, such correspondence shall be

directed to the following individuals at the addresses specified below:

As to the United States or U.S. EPA

- (A) Felipe N. Gomez  
Assistant Regional Counsel  
Office of Regional Counsel  
5CS-TUB-3  
111 W Jackson Street  
U.S. Environmental Protection Agency  
Region V  
Chicago, IL 60604
- (B) Basil G. Constantelos  
Director, Waste Management  
Division  
Attn: Margaret M. Guerriero  
Remedial Project Manager (SHE)  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street  
Chicago, IL 60604
- (C) Assistant Attorney General  
Land & Natural Resources  
Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

As to the State of Wisconsin:

- (A) Linda Wymore  
Bureau of Legal Services  
Department of Natural Resources  
101 South Webster Street  
Post Office Box 7921  
Madison, WI 53707-7921
- (B) Mark Giesfeldt, Section Chief  
Environmental Response and Repair Section  
Bureau of Solid and Hazardous  
Waste Management  
Department of Natural Resources  
101 South Webster Street  
Post Office Box 7921  
Madison, WI 53707-7921

- (C) Michelle DeBrock-Owens  
North Central District Headquarters  
Department of Natural Resources  
107 Sutliff Avenue  
Box 818  
Rhineland, WI 54501

As to Settling Defendants:

- (A) Mark A. Thimke  
Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367
- (B) James P. Lonsdorf  
Lonsdorf & Andraski  
610 Jackson Street  
Post Office Box 872  
Wausau, WI 54401
- (C) Frank A. Rovers  
Conestoga-Rovers & Associates Ltd.  
651 Colby Drive  
Waterloo, Ontario N2V 1C2

XXI.

CONSISTENCY WITH  
NATIONAL CONTINGENCY PLAN

77. The United States and the State agree that the approved Work, if properly performed as set forth in Sections IV, V and VII hereof, and if properly completed, is consistent with the provisions of the National Contingency Plan pursuant to 42 U.S.C. Section 9605.

XXII.

RESPONSE AUTHORITY

78. Nothing in this Consent Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. Section 9604 and Section 9606.

## XXIII.

COMMUNITY RELATIONS

79. Settling Defendants shall cooperate with U.S. EPA and the State in providing information regarding the progress of interim remedial design and interim remedial action at the Facility to the public. As requested by U.S. EPA or the State, Settling Defendants shall participate in the preparation of all appropriate information disseminated to the public and in any public meeting which may be held or sponsored by U.S. EPA or the State to explain activities at or concerning the Facility.

## XXIV.

RETENTION OF JURISDICTION

80. This Court retains jurisdiction over this matter for the purposes of: A) interpreting, implementing, modifying enforcing or terminating the term of this Consent Decree and; B) subject to the Dispute Resolution provisions of Section XIII, adjudicating disputes between the Parties under this Consent Decree.

## XXV.

EFFECTIVE AND TERMINATION DATES

81. This Consent Decree shall be effective upon the date of its entry by the Court.

82. Certification of Completion of Remedial Action.

A. Application: When the Settling Defendants believe that the demonstration of compliance with Performance Goals and Clean-up Standards has been made and that operation

of the extraction well system has been completed in accordance with this Consent Decree, they shall submit to the United States and State a Notification of Completion of Interim Remedial Action and a final report which summarizes the Work done, any modification made by U.S. EPA to the RAP or Work Plan(s) thereunder, analysis relating to the Performance Goals and Clean-up Standards, and data demonstrating that the Performance Goals and Clean-up Standards have been achieved. The report shall include or reference any supporting documentation.

B. Certification: Upon receipt of the Notice of Completion of Interim Remedial Action, U.S. EPA shall review the final report and any other supporting documentation, and the interim remedial actions taken. U.S. EPA shall issue a Certification of Completion of Interim Remedial Action upon a determination that Settling Defendants have demonstrated compliance with Performance Goals and Clean-up Standards as required by Section V, that operation of the extraction well system in accordance with the terms of this Consent Decree has been completed and that no further corrective action is required. Any negative determination on the part of U.S. EPA shall set forth the manner in which work has not been satisfactorily completed. Subject to Section 122(e)(6) of CERCLA, as amended, 42 U.S.C. Section 9622(e)(6), and at U.S. EPA discretion, Settling Defendants shall thereafter have a reasonable opportunity to respond and correct any deficiencies

in performance. Upon such a demonstration by the Settling Defendants, the Certification of Completion shall not be unreasonably withheld or delayed.

83. Termination: Upon the filing of U.S. EPA's Certification of Completion pursuant to the preceding Paragraph, and a showing that the other terms of this Consent Decree, including payment of all costs and stipulated penalties due hereunder have been complied with, this Consent Decree shall be terminated upon motion of either party. However, Settling Defendants' obligations pursuant to Paragraphs 66 and 84 hereof shall survive the termination of the Consent Decree and shall be enforceable by the United States by reinstitution of this action or by institution of a new action.

## XXVI.

### INTEGRATION WITH FINAL REMEDY

84. The Settling Defendants understand that U.S. EPA is continuing work on its RI/FS for the Facility and that, at the conclusion of the RI/FS and the subsequent issuance of a final ROD, the Settling Defendants (as well as non-settling PRPs) and U.S. EPA will have the opportunity to negotiate regarding the performance of the work called for in the final ROD. If the Settling Defendants (and/or other) PRPs agree to go forward with such work, then a subsequent consent decree will be entered. The provisions of this Consent Decree are subject to and subordinated to the provisions of the subsequent consent

decree, except that the following provisions of this Consent Decree shall continue in effect unless otherwise provided:

- A) Section XV (Payment) to the extent there are any reimbursable costs that have been incurred by Plaintiff pursuant to this Consent Decree but not yet paid by the Settling Defendants;
- B) Section XVI (Stipulated Penalties) to the extent there are any stipulated penalties which have been asserted pursuant to the Consent Decree but have not been paid.
- C) Section XVII (Covenant Not to Sue).

XXVII.

NO ADMISSION OF LIABILITY

85. This Consent Decree was negotiated and executed by Plaintiffs and Settling Defendants in good faith to avoid the costs and expenses of litigation. No part of this Consent Decree constitutes or should be interpreted or construed as:

- A) an admission of liability under the federal, state or local statute, regulations, ordinance or common law;
- B) an admission, determination or finding of fact;
- C) an admission of the Settling Defendants' violations of any law, regulations, ordinance or common law.

By entering into this Consent Decree, the Settling Defendants do not waive, other than as to the enforcement of this Consent Decree, and except as provided otherwise herein, any claim, right or defense that it has raised or might raise in this action or in any other proceeding or action brought by the U.S. EPA, the State of Wisconsin or any other person or entity.

86. It is further agreed and ordered that, except for payments made pursuant to Section XVI (Stipulated Penalties), the payments made by Settling Defendants are not and do not constitute penalties, fines or monetary sanctions of any kind.

XXVIII.

MODIFICATION OF CONSENT DECREE

87. This Consent Decree may be modified by written agreement of the Parties hereto. Any and all such agreed modifications shall become effective upon entry of such modifications by the Court.


ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
U.S. District Judge

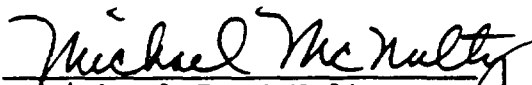
The Parties whose signatures on the following pages hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of 28 C.F.R. 50.7 and Section 113 of CERCLA, 42 U.S.C. §9613.



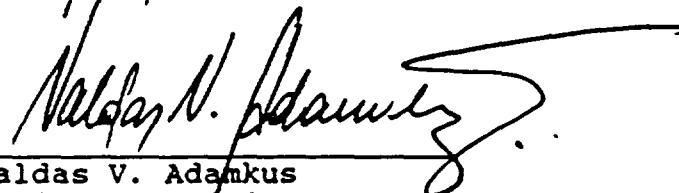
ON BEHALF OF THE UNITED STATES:

By:   
Donald A. Carr  
Acting Assistant Attorney  
General  
Land & Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530


Date: \_\_\_\_\_

By:   
Michael J. McNulty  
U.S. Department of Justice  
Environmental Enforcement Section

Date: 6/14/89

By:   
Valdas V. Adamkus  
Regional Administrator  
U.S. EPA - Region V

Date: 5/26/89

By:   
Felipe N. Gomez  
Assistant Regional Counsel  
U.S. EPA - Region V

Date: 5/15/89

ON BEHALF OF THE STATE OF WISCONSIN:

By: Carroll D. Esadny  
Carroll D. Esadny, Secretary  
Wisconsin Department of Natural Resources

Date: March 23, 1989

By: Robert A. Selk  
Robert A. Selk  
Assistant Attorney General  
Wisconsin Department of Justice

Date: March 22, 1989

ON BEHALF OF THE CITY OF WAUSAU:

By: *John Robinson* Attest: *Shirley A. Freiberg*  
John Robinson Deputy Clerk  
Mayor, City of Wausau

Date: *4/7/89* Date: *4/7/89*

ON BEHALF OF MARATHON ELECTRIC MANUFACTURING CORPORATION:

By: David Eusem  
Marathon Electric Manufacturing Corporation

Date: 3/31/89

McNulty

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
THE CITY OF WAUSAU, WISCONSIN )  
 )  
and )  
 )  
MARATHON ELECTRIC )  
MANUFACTURING CORPORATION )  
 )  
Defendants. )

CIVIL ACTION NO.

U.S. DISTRICT  
WEST DISTRICT

FILED / RECEIVED  
JOSEPH W. SKUPNIK

89 C 0655 C  
CASE  
NUMBER

COMPLAINT

The United States of America, by authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges that:

INTRODUCTION

1. This is a civil action for injunctive relief and the recovery of costs under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. No. 99-499, 100 Stat. 1613 (1986), relating to a portion of the facility in Marathon County, Wisconsin, known as the Wausau Groundwater Contamination Site (the "Wausau Site"). The United States seeks injunctive relief to address an imminent and substantial endangerment to public health and welfare and the

90-11-2

environment arising out of the release or threatened release of hazardous substance at the Wausau Site. The United States also seeks to recover costs incurred and to be incurred by EPA in conducting response actions at the Wausau Site.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter and parties to this action under 28 U.S.C. §§1331 and 1345, and Sections 106 and 113(b) of CERCLA, 42 U.S.C. §§9606 and 9613(b).

3. Venue is proper in this district under 28 U.S.C. §§1391(b) and (c), and CERCLA Section 113(b), 42 U.S.C. §9613(b), because the actual and threatened release of hazardous substances that gave rise to the claims stated in this Complaint occurred in this judicial district.

#### THE DEFENDANTS

4. The City of Wausau, Wisconsin ("Wausau") is a municipal corporation organized and existing under the laws of the State of Wisconsin and is located within this judicial district.

5. Wausau is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

6. The Marathon Electric Manufacturing Corporation ("MEMCO") is a corporation organized and existing under the laws of the State of Wisconsin and is doing business and/or is present in this judicial district.

7. MEMCO is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

GENERAL ALLEGATIONS

8. From approximately 1948 until 1955, a variety of wastes, including industrial wastes, were delivered to and disposed of at a landfill within the Wausau Site known as the Old City/Marathon Electric Landfill.

9. The Wausau Site consists of the soils, subsoils, surface and groundwater which comprise the aquifer underlying the City of Wausau. The aquifer is the source of drinking water for area residents. MEMCO's property is located in the northern portion of the Wausau Site and adjoins the west side of the Wisconsin River. The landfill is situated in the south eastern portion of the MEMCO property between the MEMCO foundry building and the river.

10. The City of Wausau owned or owns and operated an abandoned landfill known as the Old City/Marathon Electric Landfill.

11. MEMCO owns or owned the real property containing the abandoned landfill known as the Old City/Marathon Electric Landfill.

12. The Wausau Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

13. At all times relevant to this Complaint, there were and continue to be "releases", within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), and the threat of continuing releases of hazardous substances into the environment from the Old City/Marathon Electric Landfill at the Wausau Site.

14. Section 105(a) of CERCLA, 42 U.S.C. §9605(a), authorizes establishment of a National Priorities List of hazardous waste sites requiring remediation under CERCLA. The Wausau Site was placed on the National Priorities List by publication in the Federal Register on June 10, 1986, 52 Fed. Reg. 21054.

15. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604 and 40 C.F.R. 300.68, in July of 1987, EPA began a Phased Remedial Investigation and Feasibility Study ("RI/FS") at the Wausau Site to investigate and determine the nature and extent of contamination at the Wausau Site and to propose remedial actions to address the contamination. Phase 1 of the RI/FS was completed in October of 1988.

16. Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a), provides, in part:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant or contaminant at any time ..., or take any other response measure consistent with the National Contingency Plan which the President deems necessary to protect the public health or welfare or the environment.

17. The President's authority under Section 104 of CERCLA, 42 U.S.C. §9604, was delegated to the Administrator of EPA by Executive Order 12316, 46 Fed. Reg. 42237 (August 14,



1981), and Executive Order 12582, 52 Fed. Reg. 2923 (January 29, 1987).

FIRST CLAIM FOR RELIEF

18. The allegations contained in paragraphs 1 through 17 above are incorporated in this claim for relief as if fully rewritten herein.

19. During the course of conducting the Phase 1 RI/FS at the Wausau Site, EPA determined that there was a release or substantial threat of a release of hazardous substances, to the soil and underlying groundwater at the Old City/Marathon Electric Landfill and the MEMCO property at the Wausau Site.

20. Pursuant to 40 C.F.R. §300.6 and §300.68, U.S. EPA issued an "operable unit" Record of Decision which calls for the implementation of interim remedial measures to address a portion of the groundwater contamination within the Wausau Site.

21. The President, through EPA, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment at the Wausau Site because of the release and threatened release of hazardous substances.

22. Section 106(a) of CERCLA, 42 U.S.C. §106(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Old City/Marathon Electric Landfill and the MEMCO property.

23. Pursuant to Section 106(a) of CERCLA, 42 U.S.C.

§9606(a), the City of Wausau and MEMCO are liable for the injunctive relief at the Wausau Operable Unit.

SECOND CLAIM FOR RELIEF

24. The allegations contained in paragraphs 1 through 23 above are incorporated in this claim for relief as if fully rewritten herein.

25. The United States has incurred and is continuing to incur costs, including its expenses in seeking to recover money spent at the Wausau Site.

26. The costs incurred by the United States are for actions taken in response to the release or threat of release of hazardous substances from the Wausau Site, including the Wausau Operable Unit.

27. The actions of the United States at the Wausau Site and the Wausau Operable Unit and the costs incurred as a result of those actions are not inconsistent with the National Contingency Plan, which was promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, and is codified at 40 C.F.R. Part 300.

28. Section 107 of CERCLA authorizes the United States to bring an action to recover the costs incurred by the United States related to the Wausau Site, including the Wausau Operable Unit.

29. Under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), the City of Wausau and MEMCO are liable to the United

States for all costs incurred and to be incurred by the United States at the Wausau Site.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that the Court:

1. Order the City of Wausau and MEMCO to take all actions necessary to implement the Wausau Operable Unit;
2. Enter judgment against the City of Wausau and MEMCO for response costs incurred by the United States; and
3. Grant such other and further relief as is appropriate.

Respectfully submitted,

UNITED STATES OF AMERICA



DONALD A. CARR  
Acting Assistant Attorney General  
Land and Natural Resources Division  
U.S. Department of Justice

PATRICK J. FIEDLER  
United States Attorney

By:



RICHARD HUMPHREY  
Assistant United States Attorney  
Office of the United States Attorney  
Western District of Wisconsin  
120 North Henry Street  
Madison, Wisconsin 53703  
(608) 264-5158



MICHAEL J. McNULTY  
Attorney  
Environmental Enforcement Section  
Land and Natural Resource Division

- 8 -

U.S. Department of Justice  
10th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(202) 633-4046

OF COUNSEL:

FELIPE N. GOMEZ  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
230 South Dearborn Street  
Chicago, Illinois 60604

NANCY MANGONE  
Attorney  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

NOTICE TO COUNSEL:

To enable judges and magistrates of the court to evaluate possible disqualification or recusal, counsel for a private (non-governmental) business, company, or corporation shall submit at the time of initial pleading this statement of corporate affiliations and financial interest.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

v.

Case No. \_\_\_\_\_

DISCLOSURE OF CORPORATE AFFILIATIONS  
AND FINANCIAL INTEREST

\_\_\_\_\_ makes the following disclosure:  
(name of party)

1. Is said party a subsidiary or affiliate of a publicly-owned corporation?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the answer is YES, list below and identify the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly-owned corporation, not a party to this case, that has a financial interest in the outcome?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the answer is YES, list the identity of such corporation and the nature of the financial interest:

\_\_\_\_\_ Date: \_\_\_\_\_  
(signature of counsel)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

**NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A  
CIVIL CASE BY A UNITED STATES MAGISTRATE**


United States Magistrate James Groh has been specially designated by this court to conduct any and all proceedings, including jury and nonjury trials, in those civil cases in which all parties consent.

Pursuant to 28 U.S.C. §636(c)(2), you are hereby notified of your right to consent to have all further proceedings in your case handled by United States Magistrate Groh. Consent forms for this purpose are available from the clerk of court.

Your decision to give or withhold such consent is entirely voluntary.

Consent of the parties permits the Magistrate to preside over all aspects of your case, but it does not guarantee that the Magistrate will preside. The court retains residual authority, on its own motion or for good cause shown, to remove a reference of a case to a Magistrate.

Your attention is also directed to the provisions of 28 U.S.C. §§636(c)(3)-(5) concerning appeals from judgments of the Magistrate.

  
Joseph W. Skupniewitz  
Clerk, U. S. District Court  
Western District of Wisconsin

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

**NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A  
CIVIL CASE BY A UNITED STATES MAGISTRATE**

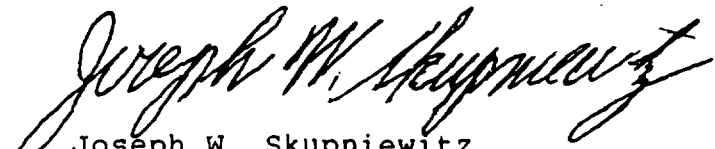
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Western District of Wisconsin